

Agenda

Item #6



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: July 17, 2012
Re: Request for Penalty Waiver by Carol Gutekunst

Carol Gutekunst is a first-time candidate for Registrar of Probate for Oxford County. She was required to file her first campaign finance report on June 1, 2012. She filed the report one day late. The report showed that the campaign has received \$1,504 in loans from the candidate and \$683 in cash contributions from others. The amount of the preliminary penalty is \$21.88 (one percent of total receipts for the period).

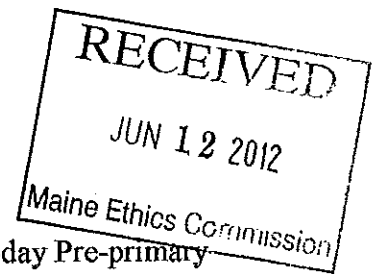
The campaign asks for a waiver of the penalty through a letter from the campaign treasurer (the candidate's husband). He states that it was entirely his fault. He had been marking the days until the deadline but lost track while driving all over the county with his wife erecting campaign signs. This is the first time the candidate has run for office. The campaign also requests a waiver because Mr. and Mrs. Gutekunst live on a limited income and will likely be paying for most of the campaign themselves.

The Commission staff believes that if the Commission is inclined to grant a waiver, it has the discretion to do so under 21-A M.R.S.A. § 1020-A(2), because of the limited harm to the public due to the one-day delay and the lack of experience of the candidate and

treasurer. Our recommendation, however, is to grant no waiver because we do not view \$21.88 as a disproportionately high amount. The treasurer was aware of the deadline, and the campaign presumably received notice of the deadline through the packet of forms and the reminder newsletter sent by the Commission staff.

Thank you for your consideration of this memo.

State of Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine, 04333-0135



Dear Commissioners:

We are requesting a waiver of the preliminary penalty for late filing of our 11-day Pre-primary campaign finance report due June 1, 2012.

While Carol Gutekunst, the candidate for Register of Probate for Oxford County, has vast experience in the probate office due to serving there for 20 years, 16 as deputy register before retiring, her experience as a candidate running for office is nonexistent. I am serving as her treasurer, campaign manager, driver, cheerleader and husband. A retired municipal recreation director, my campaign experience equals that of my wife.

The day-late filing of our initial report was entirely my fault. I had been marking the days until the deadline, but lost track while driving all over the county with Carol erecting campaign signs—another new and unique experience.

One element that could be considered in the evaluation of this waiver request is the likelihood that no harm was suffered by the public due to the late filing. Carol is running unopposed in the Democratic primary in June. As neophytes in this business we have been trying to follow the advice of the political "pros," but wonder about the need for all of this pre-primary activity when there is no opposition. We understand the need for all of this activity for the general election.

Likely the most irrelevant part of this request is the fact that Carol and I are trying to exist on an annual income of approximately \$32,000. We have raised only a small portion of the amount we will need to carry on this campaign and the chances of being reimbursed for most of the personal finances invested are slim and none. It will be a shame when the most qualified individuals are prohibited from public service because they cannot afford the cost of getting there.

As rank amateurs, we are requesting forgiveness for this initial campaign reporting transgression with the understanding that if this happens again, we know that we will face financial penalties.

Sincerely,
Phil Gutekunst, treasurer

A handwritten signature in dark ink, appearing to read "Phil Gutekunst".

Carol Gutekunst for Register of Probate (Oxford County)

Note: We received 3 notices regarding this issue. The original did not come certified—it came by regular mail, as did my copy. The certified mail addressed to Carol contained a copy.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

June 6, 2012

BY CERTIFIED MAIL AND REGULAR MAIL

Ms. Carol Gutekunst
393 Dunn Road
Norway, ME 04268

Re: Late 11-Day Pre-Primary Campaign Finance Report Due 6/1/2012

Dear Ms. Gutekunst:

Preliminary penalty amount. You filed a 11-Day Pre-Primary campaign finance report on 6/2/2012. Under the Election Law, the Commission must calculate a preliminary penalty for the late filing, based on the amount of financial activity during the report period, the number of days the report was filed late, and the candidate's filing record. The preliminary penalty for the late filing of your report is \$21.88. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement within 14 days of receiving this letter. Please do not use Maine Clean Election Act funds to pay the penalty.

Requesting a waiver. You may ask the members of the Ethics Commission to waive the preliminary penalty due to mitigating circumstances (defined below). To request a waiver, please send a letter within 14 days of receiving this notice that contains a full explanation of the reasons you filed late. If you request a waiver, the Commission staff will notify you of the date and time of the public meeting at which the Commissioners will consider your request. You or a person you designate may appear at the meeting. The Commission staff will notify you of the Commissioners' decision shortly afterward.

Mitigating circumstances. The Election Law defines mitigating circumstances as: (1) a valid emergency, (2) an error by the Commission staff, (3) failure to receive notice of the filing deadline, or (4) relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements. Also, the Commission may waive a preliminary penalty if the Commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer, or campaign staff, or the harm suffered by the public from the late disclosure.

Please call me at 287-4179 if you have any questions.

Sincerely,

Sandy Thompson
Candidate Registrar

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES

21-A M.R.S.A. Section 1020-A(4-A)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater amount of the total contributions received or expenditures made during the filing period

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty

Carol Gutekunst

Your penalty is calculated as follows:

Receipts/Expenditures: \$ 2,187.81

Percent prescribed: 1%

\$ 21.88

Number of days late: X 1

Total penalty accrued: \$ 21.88

A penalty begins to accrue on the day following the due date of the report.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1020-A(5-A)

\$5,000 for reports required to be filed 42 days before an election,
11 days before an election, 42 days after an election, and for 24-hour reports;
\$1,000 for semiannual reports.

June 6, 2012

Ms. Carol Gutekunst
393 Dunn Road
Norway, ME 04268

The Commission staff has calculated a preliminary penalty of \$21.88 for the late filing of your 11-Day Pre-Primary campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

To pay the penalty, submit a check or money order to the address below, along with the bottom half of this letter. Or, please pay online using a credit or debit card at the web address listed below. If you would like to request a waiver of the preliminary penalty, please see the instructions included in the attached letter.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay a late-filing penalty. If you have questions, please call Sandy Thompson at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Ms. Carol Gutekunst

RE: Penalty for late filing of 11-Day Pre-Primary Campaign Finance Report

Penalty ID: 1832

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

**Please Make Check or Money Order Payable to Treasurer, State of Maine
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>**

21-A M.R.S.A. §1020-A. FAILURE TO FILE ON TIME

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (NEW) .]

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD) .]

B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD) .]

[2009, c. 190, Pt. A, §13 (AMD) .]

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[2011, c. 389, §22 (AMD); 2011, c. 389, §62 (AFF) .]

4. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]